(30,501)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 536

E. C. F. SANCHEZ, EUGENE E. SANCHEZ, MABEL SANCHEZ, ET AL., APPELLANTS,

vs.

JAMES DEERING

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

E. C. F. SANCHEZ, EUGENE E. SANCHEZ, MABEL SANCHEZ, MERCEDES A. SANCHEZ, AND WILLIAM J. SANCHEZ,

Appellants,

versus

JAMES DEERING.

Appellee.

It is stipulated and agreed by counsel for appellants and counsel for appellee that the Clerk shall print only the following parts of the transcript of the record filed in said cause, to-wit:

(1) The bill of complaint.

(2) The motion to dismiss.

(3) The opinion of the District Judge.

(4) The decree dismissing the bill.

(5) The assignment of errors.

W. W. DEWHURST,
Solicitor for Appellants.

F. M. HUDSON,
Solicitor for Appellee.

BILL OF COMPLAINT.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF FLORIDA, IN CHANCERY.

E. C. F. SANCHEZ, ET AL.,
Complainants,

versus

JAMES DEERING,
Defendant.

To the Honorable Rhydon M. Call, Judge of said Court:

E. C. F. Sanchez, a citizen and resident of Gainesville, in Alachua County, State of Florida; Eugene Sanchez, a citizen and resident of Jacksonville, in Duval County, Florida; Mabel Sanchez, a citizen and resident of Gainesville, County of Alachua, State of Florida; Mercedes A. Sanchez, a citizen and resident of St. Augustine, in St. Johns County, State of Florida; and William J. Sanchez, a citizen and resident of St. Augustine, in St. Johns County, State of Florida, bring this, this bill of complaint against James Deering, a citizen of the State of New York, residing in the City of New York, in said State of New York, and thereupon complaining, your orators say:

First: They bring this their bill in the Federal Court because the matter in controversy greatly exceeds the value of Three Thousand Dollars, and arises under a treaty made by the United States with the King of Spain, and under the laws of the United States for the settlement of private land claims in the Floridas and

the law directing the issuance of patents upon confirmed claims to lands in East Florida, the Acts of Congress approved respectively May 8th, 1822, March 3rd, 1823, February 28th, 1824, February 8th, 1827 and May 23rd, 1828.

2 Second: That on, to-wit, the 16th day of January, A. D. 1805 while the Floridas were under the dominion of Spain, one Pedro Fornells applied to Enrique White, Governor of East Florida, the King's Deputy, for the grant of 175 acres to be located on Key Biscayne; that this application was granted by Governor White on, to-wit, the 18th day of January, 1805; that in accordance with the laws and regulations then in force in the Spanish Province of East Florida said concession was an inchoate grant, needing to be duly surveyed, and after survey to be followed by a royal title by which the lands granted would be segregated from the Royal Dominion and set off to Pedro Fornells; that no survey was made and the Royal Title was not issued before the cession of the Floridas to the United States.

Third: That Pedro Fornells, on, to-wit, the 19th day of May, 1793, was lawfully married to Mariana Tuforior, widow of Marcus Andreu; that the lawful issue of said marriage was a daughter, Antonia Porsila or Proala; that Pedro Fornells died intestate on to-wit, the .... day of ....., A. D. 1920, leaving as his only heir at law his said daughter, Antonio Porsila or Porala; that said widow had by her former husband a son named Rafael, born on to-wit, July 7, 1786.

Fourth: That on the 22nd day of February, A. D. 1819, the United States entered into treaty with the

King of Spain, afterwards ratified, whereby the King ceded to the United States, East Florida, and it was by said treaty stipulated that all grants of land made before the 24th day of January, 1818, by his Catholic Majesty, or by his lawful authorities in the said territories ceded by his Majesty to the United States shall be (stand) ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty; that under said treaty East Florida was delivered to the United States authorities on July 10th, 1821.

Fifth: By act of March 3rd, 1823 (3 Stats. 754) Congress provided for the appointment of three Commissioners "for ascertaining titles and claims in East Florida with the powers given by the Act of Congress approved May 8th, 1822; that Section 5 of said Act of 1822 empowered the confirmation of claims to land arising under grants, concessions and orders of survey, if satisfied that said claims be correct and valid (3 Stats. 709); that Section 3 or the Act of May 8th, 1822, under which said Commissioners to ascertain titles to land were appointed, directed that every person or the heirs or legal representatives of such persons claiming title to lands under any patent, grant, concession or order of survey dated previous to the 24th of January, 1818, which were valid under the Spanish Government * * * Shall file before the Commissioners his, her or their claim, setting forth particularly the situation and boundaries, if to be ascertained, with the deraignment of title where they are not the grantees or original claimants; which shall be recorded by the Secretary, etc.; that under these acts Alexander Hamilton,

Davis Floyd and W. H. Allen were appointed Commissioners and entered upon their duties; that on August 1, 1823, the Board of Land Commissioners adopted regulations under which they would determine claims, one of which was that all persons claiming title to lands under any patent, grant, concession or order of survey would make a brief statement by a memorial, setting forth the situation, and if possible, deraignment of title to the lands claimed, etc.; that on January 22, 1824, Alexander Hamilton refused to take part in the adjudications of said Board, and assigned his reason for relinquishing his said position, that his associates refused to secure and examine original papers and records and "were practicing the law in actions of real estate involving questions conflicting interests which are the immediate subjects of their adjudication."

Sixth: That Waters Smith was United States Marshal and William Goodwin Davis the Deputy United States Marshal in attendance on said Board of Commissioners at its session in July and December, 1824, that Mary Ann Davis was then the wife of William Goodwin Davis; that at the session of said Board of Land Commissioners held July 23, 1824, Mary Ann Davis presented to said Board a claim for confirmation of said grant to Pedro Fornells of 175 acres on Key Biscayne; that it was possible for Mary Ann Davis to have presented with her memorial a legal deraignment of title to said grant to Peter Fornells; that if, under the law then prevailing in the Province of East Florida, prior to its cession to the United States, the mother of Raphael Andreu had a garnancial interest in said lands granted Pedro Fornells, such deraignment of title would have shown the interest of Raphael Andreu in

said grant as the half brother of Antonia Porala or Porsila, and would have shown that said Antonia Porala or Porsila was a tenant in common with said Raphael Andreu of the equitable title to said grant; that Mary Ann Davis fraudulently presented to said Land Commissioners a false statement as to the claim of the legal representatives of Pedro Fornells, and sought to maintain said claim by contradictory false and fraudulent affidavits when legal evidence of the true facts existed and were available, the existence and availability whereof must have been known to the said Mary Ann Davis.

A certified copy of said memorial, grant to Pedro Fornells, deed of conveyance from Raphael Andreu to Mary Ann Davis of his right, title and interest in said grant, the affidavits and the finding and decree of said Board of Land Commissioners, are hereto attached, marked Exhibit "A", and made a part of this bill as fully as if here set out at length.

Seventh: That prior to June 30th, 1827, the United States had built a light house on Key Biscayne and although the lands granted to Fornells had never been surveyed on said 30th day of June, 1827, said William Goodwin Davis and Mary Ann Davis, for a consideration of $225.00 executed a deed of conveyance to the United States of America to a tract of three acres on said Key Biscayne, having the following lines and measurements:

"Beginning at the Water's edge, the first line runs North Fifteen degrees West, Nine Chains; the second line runs South 75 degrees West, Eight Chains; the third line runs South Fifteen degrees East, ten chains; the fourth line meanders along the ocean beach,"

said three acres having been surveyed by J. Ives and a plat thereof made April 25, 1827.

Eighth: That from A. D. 1827 to about A. D. 1850 said tract of land then unsurveyed and unsegregated from the public domain except the three acres conveyed to the United States of America remained as it has to this day remained, and yet remains wild, unoccupied land, not in the actual occupancy of any person claiming title thereto; that on, to-wit, the 6th day of May, 1843, Antonia Porsila, daughter of Peter Fornells and Mariana Tudorina, for a consideration of $400.00, sold and conveyed to Venancio Sanchez, a merchant residing at St. Augustine, Florida, the undivided half of the 175 acres granted Peter Fornells on Key Biscayne that said deed of conveyance duly executed and acknowledged was by said Sanchez recorded in the Public Records of Monroe County, Florida, in which county the land lay, on the 26th day of May, 1843, and was also on, to-wit, June 10th, 1843, recorded in the Public records of St. Johns County, where the deed from Rafael Andreu to Mary Ann Davis had been recorded. A copy of said deed and of the power of attorney under which said deed was executed is hereto attached, marked "Exhibit B," and made a part of this bill as if here fully set forth; the original of said power and said deed are in the possession of your orators, ready to be exhibited to this Court at the hearing of this cause.

Ninth: That after the record of his said deed to an undivided half interest in said grant to Peter Fornells on Key Biscayne said Venancio Sanchez openly asserted ownership of one-half of said tract of 175 acres granted to Fornells and confirmed to Mary Ann Davis; that

thereafter said William Goodwin Davis, acting for and on behalf of his wife, Mary Ann Davis, proposed to said Sanchez, in writing, that they jointly place settlers on said Key Biscayne, sell lots thereon, collect wharfage and storage, get "respectable wreckers, with substantial vessels to bring their goods to the island and make it their homes, and their vessels to hail from the town of Key Biscayne"; "that all money from the sale of lots to be equally divided between the parties," and that "if either party in the term of three years from the time of settlement should wish to dissolve and do business for himself he is to give the other party six months notice in writing, and then the parties will divide, by choosing lots alternately, and the balance to be divided by two or three disinterested persons."

Tenth: That in A. D. 1847, under direction of the Surveyor General of Florida the United States surveyed 175 acres in Township 55 S. of Range 41 East, on Key Biscayne as the lands granted Fornells by Governor White on Key Biscayne, the field notes whereof being as set forth in the patent hereinafter described; that from A. D. 1847 to A. D. 1892, said Venancio Sanchez had the undisputed ownership of an undivided one-half of said tract of land so annexed by the United States as the lands granted to said Peter Fornells (except three acres claimed as a lighthouse reservation by the United States, the metes and bounds whereof are set forth in paragraph seven of this bill) and was in the constructive possession of the whole of said grant surveyed as aforesaid (except only the ground on which the
6 lighthouse and the light keepers house stood).

That on, to-wit, August 3rd, A. D. 1892, the said Venancio Sanchez by his Attorney, attempted to

notify Mr. Edward Davis, a son of Mary Ann Davis, then deceased, at Galveston, Texas, in writing, of his intention to procure a patent from the United States to said part and asked said Davis whether Mary Ann Davis had deeded the interest she bought of said Andreu, and for information as to the heirs of Mary Ann Davis. Edmund J. Davis having died about A. D. 1884 as afterwards learned, the letter fell into the hands of Waters S. Davis, who for a long time made no reply, but on, to-wit, June 3, 1893, obtained from his co-heirs at law of said Mary Ann Davis, who died intestate about A. D. 1885, for the named consideration of $400.00, a quit-claim deed of conveyance of the tract of land surveyed by the United States as the grant to Pedro Fornells. That Mary Ann Davis acquired and held only the interest of Raphael Andreu in said grant which was such undivided interest in said grant as descended to Raphael Andreu through his mother, Mariana Fudori or Fudorina; that the heirs of Mary Ann Davis, deceased intestate, took and held only said undivided interest, and said Davis by said deed and by descent took and held only said undivided interest, and never took or held even a paper title to the beneficial interest in more than the undivided interest in said 175 acres on Key Biscayne which was conveyed to Mary Ann Davis by Raphael Andreu even after the issuance of the patent as hereinafter recited; that prior to the issuance of said patent said Waters Smith visited St. Augustine and proposed to said Venancio Sanchez that he either buy his (Davis') undivided interest in said grant, or he (Sanchez) sell his undivided half-interest in said grant to said Davis; the said Venancio Sanchez declined to sell at the price offered, or to buy at the price charged, and said Davis left with said Sanchez, his said Davis' post

office address in his own handwriting, and thereafter, failing to sell his undivided interest to said Sanchez, or to acquire from said Sanchez his half interest, said Waters Smith Davis, on, to-wit, August 10, 1893, applied for a patent, and thereafter, unknown to said Sanchez, prosecuted the claim confirmed to Mary Ann Davis before the Land Department of the United States for the issuance of a patent thereon, and on the 23rd day of April, A. D. 1896, the Commissioner of the General Land Offifce issued a patent on said claim which is recorded in Volume 19, pages 589 and
7 593 of the records of the General Land Office. Said patent is in the usual form. Recites the confirmation of the claim of Mary Ann Davis under Pedro Fornells by the Act of Congress approved March 3, 1823, and again confirmed by the Act of February, 8, 1827, the United States survey locating said grant in Township 55, South, Range 42 East on Key Biscayne, giving the field notes of said survey and a plat of said grant and all of Key Biscayne, with a reference to the American State papers setting forth the action of the Board of Land Commissioners on said claim and releasing and quit-claiming to Mary Ann Davis the land described in accordance with the law in such case made and provided."

Eleventh: Learning of the issue of said patent in the name of Mary Ann Davis, when it should have issued to the legal representatives of Peter Fornells, deceased, the attorney of said Venancio Sanchez on, to-wit, the 12th day of May, A. D. 1896, filed in the office of the Surveyor General of Florida a protest on behalf of said Sanchez against the delivery of said patent, in words and figures as follows:

Tallahassee, May 12th, 1896.

Now comes Vanancio Sanchez, by W. W. Dewhurst, his attorney, and makes and files with the Honorable W. H. Milton, Jr., Surveyor General, his protest against the issuance and delivery to W. G. Davis or to the heirs or legal representatives of Mary Ann Davis of the United States Patent dated April 23rd, A. D. 1896, recorded in Volume 19, pp. 589-593, for 179-45/100 acres of land on Key Biscayne, T. 55 S. R. 42 East on the following grounds:

That at the time said claim of Mary Ann Davis was presented to the Board of Land Commissioners he, the said Venancio Sanchez, in his own right and as trustee for his brother, owned in fee simple an undivided half interest in the said tract of land, claimed by Mary Ann Davis, by deed of conveyance from a daughter of said Peter Fornills (or Fornelli) and that the affidavits of Pedro Miranda and Bartolo Ponce set out on page 218 of Vol. 4, Amer. State Papers (Duff Green Edition) that Rafael Andreu was the sole heir of Peter Fornells was not true.

And he says that the deed of conveyance for an undivided half interest in said grant to Peter Fornelli on Key Biscayne was recorded by him many years ago in Key West and the original is in his possession ready to be produced.

(Signed) VENANCIO SANCHEZ,
By W. W. DEWHURST,
His Atty.

That thereafter, on to-wit, August 5, 1896, the Commissioner of the General Land Office overruled said

protest, and on appeal the Secretary of the Interior sustained said commissioner on to-wit the 1st day of July, A. D. 1898, and thereafter said patent was delivered to Waters Smith Davis; that the opinion rendered by said Commissioner was soon thereafter published,
8 and is contained in the printed volumes of Decisions of the Department of the Interior relating to public lands. The original of said opinion is among the files of the office of the Surveyor General of Florida, now in the custody of the Commissioner of Agriculture of the State of Florida at Tallahassee; said opinion sets out that a copy of the deed from Antonio Porcila do Barrosa to Venancio Sanchez was furnished the Commissioner of the General Land Office and recites the grounds of Mr. Sanchez's protest against the issue of the patent. The opinion failed to consider the act of February 8, 1827 (4 Statutes 202) and wrongly concluded that the confirmation of the claim by Congress was a bar to any examination into the merits of the case by the Commissioner of the General Land Office, but said opinion and its recitations became in August, A. D. 1896, record evidence of the title under which your orators held, and constructive notice to subsequent purchasers, of the claim of title made by Venancio Sanchez to a hald interest in said 175 acres on Key Biscayne; that counsel for Venancio Sanchez filed on to-wit, May 26, 1896, in the General Land Office, a brief and argument, together with the affidavit of Venancio Sanchez, reading as follows:

"State of Florida,
St. Johns County:

Venancio Sanchez being duly sworn says he is 87 years old, that he was born in St. Augustine, Florida,

and has resided in said city all his life; that some time about the year, A. D. 1840, his attention was called to Key Biscayne by one W. G. Davis, husband of Mary Ann Davis, who proposed to affiant to join him, said Davis, in developing Key Biscayne, and making it a Port of Entry, that soon after affiant visited said Key Biscayne, and being pleased with it was about to accept the proposition of said Davis but discovered that said Davis or his wife owned but an undivided half or third interest in the land on said Key, that affiant found that the owner or owners of the other half or two thirds interest in said lands lived in Havana, Cuba, and affiant soon thereafter went to Havana, personally met the owners of the other half interest in said Key Biscayne, went with them before the U. S. Consul in Havana and purchased from said owners their said interest in Key Biscayne which in the deed is described as half interest, and paid them therefore the sum of Four Hundred Dollars, that affiant immediately recorded his deed of conveyance in Monroe and St. Johns Counties, Florida, and openly asserted undisputed ownership of an undivided half interest in said lands; that said transaction occurred many years ago and affiant does not now recollect all the details of the relationship of his grantors to Peter Fornells or Bonelli to whom the said lands were granted, but affiant recollects that one of his grantors declared to him that she was the sister of Rafael Andreu the grantor to Mary Ann Davis for an interest in said Key, and affiant personally knew Rafael Andreu said grantor who was a cooper by trade and worked in St. Augustine, that affiant after his purchase of a half interest in said Key Biscayne often conversed with said Wm. G. Davis, that said Davis never disputed affiants joint ownership and title to a half interest in said lands

on Key Biscayne, but thereafter Mr. Davis made affiant a further proposition for the development of said island and in pursuance of an agreement between affiant and said Davis for the development of their joint property, affiant undertook to secure a colony from St. Augustine to settle on said island of Key Biscayne and among others secured as settlers J. C. Cleland, Sampson Williams, Dr. W. H. Simmons and Joseph Hernandez, but said settlement was never carried out; that affiant has had undisputed ownership since A. D. 1843 of a half interest in said 175 acres granted to Fornells or Bonelli on said Key Biscayne, and his right to same has within three years been recognized by Mr. W. S. Davis, the applicant for a patent from the United States for the said lands; that Mr. Davis has visited him at his store within the last three years, and proposed to affiant that he either buy or sell his undivided interest in said tract, that is that he buy his, Davis' interest, or sell to Davis his, affiant's, interest.

(Signed) VENANCIO SANCHEZ.

Sworn to and subscribed before me, this 28th day of May, A. D. 1896."

That after August 5th, 1896, counsel for Venancio Sanchez filed in said office a second brief and arguments setting out the facts and law applicable to the said grant made by Governor White to Pedro Fornells and how the undivided one-half thereof became vested in Venancio Sanchez, together with a copy of the deed to Mr. Sanchez mentioned in his affidavit, and your orators say; said protest, affidavit, statement of facts and arguments of counsel are all on file in the office of the Commissioner of the General Land Ofice, and have

been since A. D. 1896, and constitute constructive notice to subsequent purchasers of the ownership and possession of Venancio Sanchez of the undivided one-half of the grant of 175 acres on Key Biscayne, surveyed as Section ...., Township 55 S, Range 42 East; that said patent for said Spanish Grant is recorded in Volume 19, pages 589 to 593 of the records of said General Land Office; that by law there is no other place where said patent is entitled to record; that said patent and all proceedings had in the General Land Offfice with respect to the issuance and delivery thereof, constitute one record, and are notice to subsequent purchasers of the facts which are in said record set forth, and of the law applicable to said facts.

Twelfth: That the lands surveyed by the United States as the grant to Pedro Fornells and by the metes and bounds patented has a frontage of fifty-five chains on the Atlantic Ocean, and about the same frontage on the Bay of Florida, and the owners thereof on the 27th day of December, A. D. 1856, received a grant from the State of Florida to all that tract of land lying between the water boundary of their said lands as surveyed by the United States and the edge of the channel; that said grant was and is a valuable interest in a strip of land covered by water more than a mile long and of a width equal to the space between the shore line and the edge of the channel of the bay of the sea washing said patented lands, to which strip of land covered by water, Chapter 791 Laws of Florida vested in the then owners of the grant to Pedro Fornells the full title, with the full right and privilege to build wharves into said waters and to fill up from the shore or beach as far as may be desired and upon the

lands so filled to erect buildings and also the right to prevent encroachment of any other persons upon said strip of submerged land, and to maintain action of trespass for any interference with such property; that at the rate of said Riparian act Venancio Sanchez was the owner of the undivided one-half of the said tract of land surveyed by the United States in A. D. 1847 as the grant of Pedro Fornells and in him vested by said Riparian Act an undivided one-half interest in the full title to said strip of submerged lands as tenant in common with the legal representatives of Pedro Fornells; that if Mary Ann Davis acquired any estate in said grant to Pedro Fornells, that as to all of said strip of submerged land, except the three acre tract by her conveyed to the United States, she became by said grant a tenant in common with said Venancio Sanchez; that as to the strip of submerged land in front of the tract described in paragraph seven of the bill, the United States and Venancio Sanchez became by said Riparian Act, tenants-in-common; that on to-wit, March 4, A. D. 1903, Waters Smith Davis for the consideration of Four hundred dollars obtained a deed for conveyance from the United States to said light-house reservation of three acres by the same metes and bounds set out in paragraph seven of this bill; that whether the United States conveyed to said Waters Smith Davis their Riparian rights in said strip of submerged lands your orators are not advised.

Thirteenth: That Venancio Sanchez died in A. D. 1899, intestate, leaving your orator, William J. Sanchez, his son, his only heir at law; that on to-wit, the 10 day of May, A. D. 1915, the Probate Court of St. Johns County, having jurisdiction, made an order that no administration upon the estate of said Venancio Sanchez

was necessary; that in his lifetime before the issuance of said patent, on to-wit, the 17th day of June, A. D. 1895, being then owner of the Riparian rights in the last paragraph described, and seized and possessed of the beneficial interest in an undivided one-half of the lands granted to Pedro Fornells, said Venancio San-
11 chez executed a deed of conveyance of one-half of his undivided one-half of said granted lands to his brothers' children, namely, the complainant, E. C. F. Sanchez, Mary A. P. Sanchez, in her own right and Mary A. P. Sanchez as trustee for the children of her deceased brother, the complainants, Eugene Sanchez and Mable Sanchez, and for Sidney Sanchez, brother of said last named complainants, now deceased, wherein and whereby said Venancio Sanchez conveyed to said named grantees an undivided one-quarter interest in the lands granted to Pedro Fornells by Governor White on Key Biscayne, containing 175 acres; which deed of conveyance, duly acknowledged by the grantor was recorded in the public records of Dade County, Florida, on the 17th day of June, A. D. 1895, and became constructive notice to subsequent purchasers of the estate and interest taken in A. D. 1843 and held by said Venancio Sanchez in said tract of 175 acres on Key Biscayne and of the estate and interest held by these complainants as co-tenants under said recorded deeds; that since the record of said last described deed said Mary A. P. Sanchez died intestate, leaving as her only heirs at law, a brother, said E. C. F. Sanchez, said Eugene Sanchez a nephew and said Mable Sanchez a niece, and the trust estate granted her by said deed from her uncle became merged into the equitable estate held by the complainants, Eugene Sanchez and Mable Sanchez as to said two complainants, and descended to

said E. C. F. Sanchez as to the share taken by him in said trust estate upon the same trust held by said Mary A. P. Sanchez in her lifetime; that Sidney Sanchez named in said deed from Venancio Sanchez died single and intestate during the life of said Mary A. P. Sanchez, and his equitable estate being one-thirty-sixth of said grant to Peter Fornells descended to his heirs at law, Mercidez A. Sanchez, his mother, and his brother Eugene Sanchez and his sister Mable Sanchez, all of whom are complainants herein; that in said deed to his brother's children and grandchildren said Benancio Sanchez did not include the Riparian rights vested in him by Chapter 791 Laws of Florida, and the title of the same rests in your orator, William J. Sanchez.

Fourteenth: That on the 28th day of June, A. D. 1913, Waters S. Smith, then the depositary of the legal estate for the convenience and benefit of your orators as to a one-half undivided interest in said grant to
12 Fornells, joined by his wife, made a deed to the defendants, James Deering, of New York City, purporting to convey to said defendant all the land granted by Governor White to Peter Fornells as surveyed by the United States, and other land on Key Biscayne, such other lands having been acquired by said Davis by mesne conveyance from the State of Florida as swamp lands granted the State by the Act of September 20, 1850, in which other lands your orators claim no estate or interest; that on said 28th day of June, A. D. 1913, the said lands granted to Peter Fornells were unenclosed unoccupied wild lands, mostly too low for occupancy, and except for a strip of sand ridge on the ocean front, covered by a growth of mangrove shrubs and trees, and such must have been their character at

the date of said grant and at all times thereafter to the time of filing this bill, except only that without enclosure and without cultivation or other improvement than a few cocoanut trees on the lot of three acre described in the twelfth paragraph of this bill, there stands the old Cape Florida Lighthouse, long since abandoned and deserted, and part of the light keepers house, the greater part whereof has washed into the sea.

Fifteenth: That the defendant, James Deering, has never personally had any possession of said lands granted to Fornells; that he has put a keeper on Key Biscayne who has a habitation somewhere on the island, but said defendant by his said keeper or otherwise has never taken an exclusive possession of said grant, and no part of said grant has been enclosed or in any manner cultivated or improved, nor has said defendant ever performed on said grant or caused to be performed thereon any of the acts required to constitute adverse possession by Section 1721, General Statutes of Florida; that the constructive possession had by Venancio Sanchez in his lifetime, which passed to your orators by descent and as grantees of said Sanchez, in A. D. 1895, and which under the treaty between the United States and Spain and the Acts of Congress respecting land claims thereunder follows the beneficial ownership of an interest in said lands has been unbroken and continued in your orators as co-tenants with the defendant, James Deering, insofar as said defendant is a legal representative of Pedro Fornells of the whole of said grant to Fornells, including the three acre tract on which the lighthouse was built, said three acre tract having been abandoned by the United States long before the 4th of March, 1903, and having never been enclosed or cultivated.

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Sixteenth: That Section 5 of said Act of May 8th, 1822, provided that the confirmation by said Board of Commissioners appointed to ascertain titles "shall only operate as a release of any interest which the United States may have, and shall not be considered as affecting the rights of third persons"; That Section 2 of the Act of February 8th, 1827, prescribed that the confirmation of any claim by the Commissioners appointed to settle private land claims in East Florida shall not be construed "to prevent or bar the judicial decision between persons claiming title to lands confirmed"; that although confirmation of her said claims was secured by the active fraud of said Mary Ann Davis, yet said confirmation in no way affected the right, title and interest in said grant of 175 acres on Key Biscayne, held at the date of said confirmation by Antonia Porsila, half sister of Rafael Andreu, being at least an undivided one-half of said grant made by Governor White to her father; that between December, 1824, and the 26th day of May, A. D. 1843, said Antonia Porsila held the equitable title to at least an undivided one-half of the estate and interest granted to Peter Fornells, the legal title being in the United States of America; and thereafter from said 26th day of May, A. D. 1843, until the 17th day of June, 1895, said Venancio Sanchez held the equitable estate to said undivided interest in said lands so granted, the legal title still remaining in the United States; and from the 17th day of June, A. D. 1895, your orators as sole heir at law of said Venancio Sanchez and as his grantees in the recorded deed from Venancio Sanchez set out in paragraph 13 of this Bill, held and now hold the equitable estate to an undivided half interest in said 175 acres on Key Biscayne; that because said Antonia De Barrosa conveyed to Venancio Sanchez an undivided one-half inerest in the grant to Pedro

Fornells, your orators now claim only one-half of said grant, but your orators allege that said Pedro Fornells died intestate, that by the law in force in the territory of east Florida all his property descended to his said daughter Antonia, and none of said property descended to his widow, the mother of Rafael Andreu, and if she took and held any estate therein it was only by reason of the fact that the pre-existing Spanish Law vested in her a garnancial right.

Seventeenth: That the United States held the bare legal title to said lands granted by Governor
14 White to Peter Fornells by cession from the King of Spain, in trust for the grantee under the King of Spain; that by the issuance of the patent from the United States to Mary Ann Davis in A. D., 1896, at which date Mary Ann Davis was dead, intestate, her legal representative, Waters Smith Davis, by descent, and conveyance from his co-heirs, took the bare legal title to said tract of land in said patent described, as Trustee for your orators holding title under Antonia Porcila or Porala, as to at least an undivided one-half of said 175 acres (179 45/100 acres as patented); that from the issuance of said patent until he conveyed to defendant, James Deering, said Waters Smith Davis held the whole legal estate for certain purposes, with a limited interest in the beneficial ownership of the lands patented, as Trustee for himself and for your orators, your orator's estate being an undivided half thereof; that after said conveyance by Davis to the defendant, said defendant took and holds the same estate as trustee for your orators; that since the issuance and delivery of said patent from the United States, the legal estate being in their tenant in common, your orators and said Waters Smith Davis were both cestuis que

trust, and said trustees and cestui que trust as to a limited interest having conveyed to the defendant James Deering, said defendant now stands in like relationship to your orators.

Eighteenth: That at no time during the continuance of said trusts, namely the trust taken and held by Waters Smith Davis and the Trust taken and now held by the defendant, has any money been spent on said property, nor have any improvements been put thereon, and no development thereof has been made; that during the entire period from the confirmation of the grant to Fornells in A. D. 1824 to the present time, said lands (except only the very small plot on which the old light-house now stands, and on which the light keepers house stood, now mostly washed into the sea) have remained a wilderness as left by nature, originally a sand bar, gradually built slightly above the level of the ocean by the growth of mangroves thereon; that the defendant has paid annual taxes assessed on said lands (with other lands on Key Biscayne) since A. D. 1913, and your orators hereby offer to repay said defendant the equitable share of said taxes which, as owners of an undivided half of said 175 acres, they were equitably obliged to pay; and they ask this Court to determine the amount of said annual taxes by reference to a Master, and promise to make tender of such sum as this Court may apportion as their share of such taxes paid by the defendant on said 175 acres or to allow the defendant said ascertained sum in partition proceedings if sent for partition shall hereafter be instituted by your orators or by defendant.

Nineteenth: The defendant will aver in answer to this bill that the claim of your orators is stale; that it

is twenty-two years since the patent issued in the name of Mary Ann Davis was delivered and the trust relationship began; that the secret proceedings and doings of Waters Smith Davis after he was advised by the attorney for Venancio Sanchez in A. D. 1892, of the intention of Mr. Sanchez to apply for the issuance of a patent on said claim of Pedro Fornells took place more than twenty-seven years before the filing of this bill; That Venancio Sanchez and your orators have been guilty of such laches that a Court of Equity will not grant relief because, as defendant will claim, he is a bona fide purchaser for value without notice; but your orators say such charges of laches are in law no defense upon the exceptional facts of the case upon which this bill is founded, and said defendant is not a purchaser without notice, but he purchased after notice; that under the law herein referred to, the confirmation of the claim of Mary Ann Davis in no manner affected the rights of Antonia Porsila or Porala, also called Porcell, the daughter of Marina Fornells, also called Mariana Fudorina, the widow of Peter Fornells, or of her grantee, Venancio Sanchez; that Venancio Sanchez through his attorney made the first move to secure the patenting of said grant to Fornells and in A. D. 1892 advised said Davis by letter addressed to his brother, then deceased, of his intention to secure a quit-claim from the United States for said lands owned in common by said Sanchez and the heirs of Mary Ann Davis, if as said Sanchez then supposed her grantor, Rafael Andreu, had some estate in said grant to Fornells; that said Sanchez did all he then could do to prevent the issue of the patent in the name of Mary Ann Davis; that while the Commissioner of the General Land Office disregarded the Act approved February 8th, 1827, (4 Stats. page 202) requiring claimants applying for patents for confirmed claims in the Territory

of Florida to present a patent certificate, and making it the duty of said Commissioner to ascertain and determine whether such patent certificate had been fairly obtained, yet under the law the rights and interests of said Venancio Sanchez as the owner of the undivided one-half of the lands described in said patent issued in the name of Mary Ann Davis were in no way adversely af-
16 fected by the issuance of said patent; that the patentee held such patented lands as trustee for your orators as co-tenants owning an undivided half thereof, both under said law governing the issuance of patents for confirmed private land claims in East Florida, and under the general law, Section 2447, Revised statutes, providing that such patent only operates as a relinquishment of title on the part of the United States and in no manner precludes a legal investigation and decision by the proper judicial tribunal between adverse claimants of the same land; that after Waters Smith Davis secured said quit-claim from his co-heirs of Mary Ann Davis, and secured the issuance of said patent in the name of Mary Ann Davis, and after he acquired the title of the United States to the three acres reserved for the Cape Florida Lighthouse, said Davis did not take any action to oust your orators from the constructive possession then held by them, which had come to them by descent as to William J. Sanchez and as to all the other Complainants by their duly recorded deed from Venancio Sanchez and which said Sanchez held at the delivery of said deed; that your orators never had actual knowledge that said Davis had parted with the legal title held in trust as aforesaid, and not until immediately prior to the institution of this suit did your orators know by the record of the deed from said Davis that said Davis had transferred to the defendant the legal title of which he was depository under the patent from

the United States; that the defendant James Deering, has never in any manner whatsoever ousted your orators of their constructive possession of the whole of said patented lands; nor did said Waters Smith Davis, nor said defendant ever show acts of possession of the patented lands inconsistent with, and exclusive of the rights of your orators as co-tenants, and such as would amount to an ouster on the part of Davis or the defendant, their co-tenant, and bring to the knowledge of your orators or either of them knowledge that said Davis or said defendant claimed exclusive ownership of said patented lands; and your orators allege that shortly prior to the issuance of said patent said Waters Smith Davis at St. Augustine in the store of said Venancio Sanchez did admit and recognize the rights of said Sanchez in said 175 acres on Key Biscayne, as his co-tenant of said lands; and further allege that the defendant never has taken or held an exclusive adverse possession of said patented lands, or such a possession thereof as is inconsistent with the rights of your orators as his co-tenants.

17 Twentieth: Your orators allege that Waters Smith Davis had actual notice of the claim of your orators, and that their ancestor and grantor Venancio Sanchez, held a vlaid title to an undivided one-half of said grant as said Davis' co-tenant, and constructive notice by the record of said deed from Vanancio Sanchez to your orators, recorded June 17th, 1895, in Book "X", page 262, Dade County Public Records that your orators were his co-tenants; and further allege that said Davis had actual notice of the facts contained in the files and decisions in the office of the Commissioners of the General Land Office relating to the title to said patented lands granted to Fornells, and of the contents of the files in the office of the Surveyor General of Flo-

rida relating to said grant to Pedro Fornells of 175 acres on Key Biscayne and confirmation thereof by the Board of Land Commissioners aforesaid, Exhibit "A" of this Bill; and said defendant had constructive notice of all said files and recorded proceedings and of the recorded deed from Antonio de Barrosa to Venancio Sanchez, and the recorded deed from Venancio Sanchez to your orators other than William J. Sanchez and before he took his deed was bound to take notice that on the face of the grant to Fornells it appeared that his family then consisted of wife and two step-sons; that Raphael Andreu conveyed to Mary Ann Davis only his and his wife's interest in the lands granted by Governor White to Fornells, whatever that might be, and that upon the law and facts Waters Smith Davis held only a beneficial interest in an undivided part of said granted lands with the bare legal title to all said lands patented by the United States as the grant to Peter Fornells as trustee for your orators as to an undivided one-half of said patented lands; that in making a connected chain of title from Peter Fornells to Waters Smith Davis the defendant necessarily had constructive notice of your orator's title to said 175 acres on Key Biscayne, and was affected with constructive notice of all proceedings had in the General Land Office relative to the issuance of the patent to Mary Ann Davis of the proceedings had in the confirmation of the grant to Fornells and of the recorded deeds in the chain of title under which your orators own an undivided one-half of said patented lands;

That in A. D. 1843 Key Biscayne lay in Monroe County; that if the requirement of the Laws of Florida directing that the record of all deeds to land formerly in
the County of Monroe, made a part of Dade
18 County be transcribed in the records of Dade
County has been complied with, then there

existed in the Public records of Dade County when the defendant acquired the interest of Waters Smith Davis in said 175 acres on Key Biscayne, a record of the deed from Antonia de Barrosa to Venancio Sanchez for her undivided one-half of said 175 acres; that if said State Statute has not been complied with then the contents of the public records of Monroe County as to said deed of conveyance duly recorded therein was constructive notice to defendant of the title of Venancio Sanchez, and together with the deed of Venancio Sanchez of the one-half part of the same half interest in said 175 acres to your orators, other than William J. Sanchez recorded in the Public records of Dade County in Book "N" page 262 on June 17, 1895, gave the defendant such notice of the title of your orators as bars any claim that defendant was a bona fide purchaser of said 175 acres without notice.

Twenty First: Your orators say that they have not been guilty of laches and that their grantor, Venancio Sanchez, in his lifetime was not guilty of laches. They are advised by their counsel, who acted as counsel for Venancio Sanchez in his lifetime, and they allege to be facts: (a) That in 1843 said Sanchez by valid deed acquired the estate and interest in said land which the half sister of Rafael Andreu by the same mother had inherited from her father, dead intestate, to the extent of the undivided one-half of said 175 acres on Key Biscayne, being an equal estate to that taken by the mother of Rafael Andreu, the grantor of Mary Ann Davis, as garnancial rights, if said mother was by the pre-existing Spanish law entitled to garnancial rights in said tract of land; that said Sanchez promptly recorded said deed from Antonia de Barrosa, formerly Porcell, also called Porsila in the public records of Monroe County in which

the land lay, in Deed Book "C", pages 328 Et seq; and also thereafter recorded said deed in the public records of St. Johns County in Book "O", pages 562 et seq on the 10th of June, 1843. (b) That after A. D. 1843 and prior to A. D. 1860 said Venancio Sanchez undertook to procure one, J. C. Cleland, one Sampson, Williams, one Dr. W. H. Simmons, and one Joseph Hernandez, all residents of St. Augustine to make settlement on his said lands on Key Biscayne. (c) That prior to the issuance of said patent and while his right to the ownership of the undivided half of said grant to Fornells was undisputed, said Venancio Sanchez made diligent effort to find his grantor Antonia de Barrosa or any of her descendants, to get legal evidence to prove her relationship to said Rafael Andreu, who quit-claimed his interest in said grant to Fornells, to Mary Ann Davis; that his efforts in this line of endeavor were extended, exhaustive, and persistent; that among other sources of information said Sanchez made inquiry of the college of Notaries at Havana, Cuba. (d) That he made inquiries of Laura K. Santo of St. Nicholas, Florida, claiming to be a descendant of Mariana Bellonas, formerly Andreu, for facts to prove Antonia de Barrosa was a sister of Rafael Andreu.

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(e) That said Sanchez, after 1843 and prior to his death, diligently and persistently sought to find in the church records in Havana and St. Augustine, the proof to establish the facts which he, said Sanchez, knew by the claim of Antonia de Barrosa that said Antonia de Barrosa was the sister of said Rafael Andreu by the same mother; that the then insurmountable obstacle to obtaining such proof was the difference in name of said Antonia Porcila and her long absence from St. Augustine, her residence having been in Havana, Cuba; long

before A. D. 1823; that said Sanchez had no clue, and after long continued, persistent efforts could get no clue to lead him to the record proof that his grantor and the grantor of Mary Ann Davis were brother and sister.

(f) That such continued to be the state of the case until July A. D. 1919, when it was discovered by counsel of the late Venancio Sanchez that the index to the Spanish Archives made by Antonio Alvarez, formerly Keeper of the Archives, was still existent. Your orators say they are advised by counsel and they allege to be the fact that Antonio Alvarez, when Keeper of the Public Archives, made an index of all the papers and documents seized by the United States at the change of Flags, constituting the Spanish Archives of East Florida, intending to sell said index to the United States; that said index was for many years lost and was supposed to have been turned over to one Mote, an abstractor of title living in Jacksonville, with other books and papers belonging to said Alvarez, and to have been burned in the big fire in Jacksonville which did burn the books and papers formerly the property of said Alvarez which had theretofore been turned over to said Mote; that most unexpectedly in July, 1919, the index to the Spanish Archives made by said Alvarez was discovered, and on being searched it was found that said index gives the bundle, document and folio of the written instruments in the testamentary proceedings had in the estate of Mariana Tudori, also called Tudorina, the mother of Raphael Andreu, widow of Pedro Fornells, the father of Antonia Porcell, also called Porala; the same as to the grant to Pedro Fornells, of 175 acres on Key Biscayne, and much other information without which the true facts could not be established.

(g) That immediately on getting information from said index to enable the making proof that the grantor of Venancio Sanchez was the half sister of the grantor of Mary Ann Davis, counsel for your orators made search for the original documents pointed out in said index and of the church records, necessary to make full proof, and soon thereafter advised your orators that at last for the first time in many years, the proofs were available to establish the extent and interests that Venancio Sanchez and Mary Ann Davis held under a common title to the 175 acres granted Pedro Fornells on Key Biscayne, Mr. Sanchez owning an undivided one-half thereof, which documentary proofs your orators are ready to produce at the hearing of this cause.

(h) That before any action with respect to the bare legal title held by the United States was had by Mary Ann Davis or her heirs, or by Waters Smith Davis under the claim of Mary Ann Davis, and while he had undisputed ownership of the undivided half of said grant to Fornells, said Venancio Sanchez began proceedings to procure the issuance of a patent for said lands from the United States, who by the Treaty with Spain had declared themselves to be a trustee for those who held the beneficial interest therein.

(i) That never from the time when Venancio Sanchez filed his protest against the issue of said patent in the name of Mary Ann Davis, until his death in A. D. 1899 did said Sanchez desist from his efforts to obtain the proof to establish the relationship of his grantor with the grantor of Mary Ann Davis, and without intermission since A. D. 1899 to the successful outcome as above recited has your orator's counsel, acting in their behalf persisted in search for such proof.

(j) That the proceedings for the confirmation of the claim of Mary Ann Davis printed in American
21 State Papers, Vol. 4, 161-218-263 (Duff Green Edition) upon their face cast suspicion on said claim and are notice sufficient to make inquiry by defendant a duty; that on the fact of said proceedings it appears that Mary Ann Davis had acquired only the right, title and interest of Raphael Andreu in the grant to Pedro Fornells, whatever that might have been; that while the defendant might have been as helpless as said Sanchez was to ascertain the true interest Raphael Andreu had in said grant on June 12, 1824, the date of said Andreu's deed to Mary Ann Davis, yet said defendant and his counsel were bound to know the law governing the title to Spanish Grants of land and to make inquiry, and to search the records of the Land Department of the United States, and such inquiry and search would have furnished sufficient facts to establish that until A. D. 1898 the bare legal title to said grant was held by the United States of America in trust not for Mary Ann Davis and her peers but for the legal representatives of Pedro Fornells; and your orators allege their ancestor and grantor, Venancio Sanchez, and his grantor, the daughter of Pedro Fornells, were such legal representatives, certainly as to one-half of said grant; that after the delivery of said patent Waters Smith Davis took and held under said patent the bare legal title, in trust for the legal representatives of Pedro Fornells as tenants in Common, your orators being cestuis que trust as to an undivided one-half interest in the lands described in said patent.

(k) That said Venancio Sanchez, though using the utmost diligence was never able to procure the necessary evidence to unearth and prove said concealed fraud of

Mary Ann Davis and her husband; that the facts constituting the fraud by which Mary Ann Davis secured confirmation of her claim were first known to your orators and were first discovered by your orators' counsel in July, A. D. 1919, when the existence of Alvarez's Index to the Spanish Archives became known and your orators counsel found therein by search, that among said Archives were the testamentary proceedings in the estate of Pedro Fornells, and of the estate of Mariana Furodina, widow of said Peter Fornells, and it was only after such discovery and because of such discovery that your orators were and are able to produce the legal evidence, that the finding of the Board of Commissioners on said Mary Ann Davis claim that "Fornells and his wife having died, the land descended to Andrews, who sold and conveyed the same to claimant" was
22 fraudulently made, and made to deprive the rightful owner of the lands of their property, which by the eighth article of the Treaty with Spain the United States covenanted to ratify and confirm to the legal representatives of Pedro Fornells; that while the facts which constituted fraud and by which the fraud may be proved in the proceedings of Mary Ann Davis before the Board of Land Commissioners, have just come to light, your orators say that under the treaty of 1819 between the United States and Spain and under the several acts of Congress for the confirmation of private land claims in the Territory of East Florida no duty devolved on them to take any action whatsoever with respect to the bare legal title to said lands granted to Pedro Fornells by Governor White, even though the claim was prosecuted by Mary Ann Davis alone and the grant confirmed to her; that the trust under which the bare legal title to said lands has been held since said grant, up to the filing of this bill, has never been dis-

avowed; that your orators and their grantors have, since the cession of the Floridas by Spain been cestuis que trust of the lands granted Pedro Fornells; that they and their grantors have been continuously in possession of said lands (except the spot on which the old light-house stands and the lightkeeper's house stood) and are now in possession thereof; that the relation of trustee and cestui que trust as to the undivided half of said grant between the patentee from the United States and your orators has continued unbroken by any act on the part of the former trustee Waters Smith Davis, or of the defendant; but so it is your orators now desire to end their character as cestuis que trust; that as they are in law entitled to do they now desire to join with their equitable title, the legal title to their share of said lands granted Pedro Fornells and patented by the United States in the name of Mary Ann Davis; that upon the law and facts peculiar to this case there has been no unreasonable delay in bringing this action, and that they and their predecessors in title have not been guilty of laches in allowing the existing trust to remain outstanding up to this time.

For as much therefore as your orators are without remedy in the premises except in a Court of Equity, and to the end that said defendant James Deering be required to make full and direct answer to this bill, but not under oath, answer under oath being hereby waived;

That said defendant may be decreed to hold the title of the undivided one-half of the grant of 175
23 acres on Key Biscayne made by Governor Enrique White to Pedro Fornells, surveyed by the United States as Section .... in Township 55 South of Range 42 East, patented in the name of Mary Ann Davis by the United States the 23rd day of April A. D.

1896, patent recorded in Volume 19, pages 589 to 593 of the records of the General Land Office, in trust and as trustee for the use and benefit of your orators jointly in the several shares which became vested in your orators by descent and under the deed from Venancio Sanchez, recorded in Deed Book "N", page 462, Public Records of Dade County; that this Court will construe the legal effect of the grant made to Venancio Sanchez by Chapter 791 Laws of Florida and determine whether the full title to the strip of land lying upon the Bay of Florida as far as the edge of the Channel within the extended lines of the survey made by the United States as the grant to Peter Fornells, which was vested in Venancio Sanchez by the Act of the Legislature of Florida, approved December 27th, 1856, known as the Riparian Act is so connected with the bare legal title which passed out of the United States by the patent that the defendant should make a deed to the complainant, William J. Sanchez. That if it be found that under the several statutes named in the first paragraph of this bill and under the treaty between the United States and Spain aforesaid your orators' undivided one-half interest in said grant to Peter Fornells requires a deed to vest in them the full title to their respective shares in said lands patented by the United States as the grant to Peter Fornells and the riparian rights vested in Venancio Sanchez as the owner of an undivided one-half of said lands on Dec. 27th, A. D. 1856, then that the defendant James Deering be decreed to convey to your orators an undivided one-half interest in said grant as patented by the United States in the name of Mary Ann Davis, each of your orators taking the share which they are entitled to under said Venancio Sanchez.

And that your orators may have such other, further and different relief in the premises as equity may require, and to Your Honor may seem meet.

May it please Your Honor to grant to your orators the United States writ of subpoena in Chancery out of and under the seal of this Court, directed to said defendant James Deering, commanding him to appear in this Honorable Court on a day therein named, and true, direct and perfect answer make to this bill of
24 complaint, but not under oath, answer under oath being hereby expressly waived, and to stand to and abide by and perform such order and decree in the premises as to Your Honor shall seem meet.

And your orators will ever pray, etc.

W. W. DEWHURST,
Solicitor for Complainants.

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42 MOTION TO DISMISS BILL OF COMPLAINT.

In the District Court of the United States, for the Southern District of Florida, In Chancery.

E. C. F. Sanchez, et al, Complainants,
vs.
James Deering, Defendant.

Comes now the defendant, James Deering, and moves the Court to dismiss the bill of complaint herein on the following grounds:

1. The bill of complaint is without equity and does not state facts sufficient to entitle the plaintiffs to any relief.

2. The facts stated in the bill show that the alleged claim is a stale claim, and that the cause of action ought not to be maintained.

3. The bill shows on its face that the plaintiffs have been guilty of laches, and that the cause of action cannot be maintained in equity and good conscience.

4. Whereof the defendant prays that the bill of complaint herein be dismissed.

HUDSON, WOLFE & CASON,
Attorneys for Defendant.

Filed June 14, 1920.

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43 In the District Court of the United States, in and for the Southern District of Florida.

E. C. F. Sanchez, et al,
vs.
James Deering.

W. W. Dewhurst, of Saint Augustine, Florida, Complainant's Solicitor.
Hudson, Wolf & Cason, of Miami, Florida, Defendant's Solicitors.

CALL, District Judge:

In this cause the bill of complaint was filed April 7th, 1920, praying that the defendant be decreed to hold the legal title to an undivided half interest in the real estate described in the bill as the trustee for the complainants and for other relief.

The basis of the suit is a grant by Governor White, of 175 acres of land upon Key Biscayne, (Key Buskun) in Dade County, Florida, while the Floridas were under the Dominion of Spain.

The bill shows the grant to Pedro Fornells on January 18th, 1805; the memorial of May Ann Davis to the commissioners for confirmation of the grant July 23rd, 1824, claiming title through a deed from Rafael Andrue, a step-son of Pedro Fornells, executed July 12th, 1824.

The action of the commissioners confirming this grant to Mary Ann Davis was approved and confirmed by Act of Congress February 8th, 1827. The survey of the Surveyor General was made in 1847 segregating the 175 acres from the Public Domain. On June 30th, 1827, Mary Ann Davis and her husband deeded to the United States three acres of the tract on which the Cape Florida Light House was built; this light House was subsequently abandoned and in 1903 the three acres was conveyed to Waters S. Davis; June 3rd, 1893, the heirs of Mary Ann Davis quit claimed their interest to Waters S. Davis. April 23rd, 1896, patent for these lands was issued to Mary Ann Davis the confirmee, but was not delivered until 1898 on account of a protest filed by Venancio Sanchez, which protest was overruled by the Surveyor General, the Land Commissioner and the Secretary of the Interior.

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June 28th, 1913, Waters S. Davis, one of the heirs of Mary Ann Davis, conveyed these lands to the defendant.

The complainants design their title to one half undivided interest in and to said lands through a deed executed by the attorney in fact of Dona Porsila de Barrosa, widow, and daughter of Pedro Fornells, and her children, residents of Cuba, to Venancio Sanchez, dated May 26th, 1843.

The bill further alleges certain transactions between Sanchez and the husband of Mary Ann Davis, looking to the division of the land into lots and settlement of same, which were not consummated, as well as a conference between Sanchez and Waters S. Davis looking to a buy or sell proposition, which resulted in failure to arrive at an agreement; the subsequent application of Davis for the patent and the protest filed by Sanchez against the issuance of same and the proceedings thereunder; and the issuance of the patent in 1898, as above noted. A number of allegations are made to show that the complainants, nor their predecessor in title, were guilty of laches in asserting their claims in the Courts.

The defendant moved to dismiss the bill on the grounds that the bill showed that complainants were guilty of laches and the action ought not to be maintained in equity and good conscience.

The 8th Article of the Treaty by which the Floridas were ceded to the United States as copied in
45 the case of United States vs. Perchman, 7 Peters 88, (32 U. S. 87) is as follows: "All the grants of land made before the 24th of January, 1818, by his Catholic Majesty or by his lawful authorities in the Territories ceded by his Majesty to the United States", (the English portion says "shall be ratified and confirmed" the Spanish "shall remain ratified and confirmed") "to the persons in possession of the lands to the same extent that the same grants would be valid if the Territories had remained under the Dominion of his Catholic Majesty."

Where the lands granted had been officially surveyed and segregated from the Public Domain prior to the cession, the title had vested, and as I understand the language of Chief Justice Marshall in U. S. vs. Perchman,

Supra., the United States took no title to same by the treaty of cession. If, however, the grant was of a certain number of acres of land, as was the case in the grant involved in this case, undefined and incapable of identification, then title became perfect only when the granted land was surveyed, thus segregating it from the Public Domain, and a patent issued. Langsdean vs. Hanes, 21 Wall. 531.

I am of opinion therefore that it is from the issuance of the patent that the title became perfect in this case, although the survey was made and approved in 1847.

It is therefore from 1896 or 1898 that I will consider the question of laches.

The bill shows that Vanancio Sanchez lived until 1899, something like a year after his protest against the issuance of the patent had been overruled by the Secretary of Interior and when he recognized that Davis was claiming the whole acreage. That no steps were taken by him to assert his claim to the undivided half interest, because of the difficulty in discovering record evidence to establish the title of his grantors, I deduce from the allegations of the bill. He was charged with notice that in 1893 the grantor of the defendant had received a conveyance of the three acre tract, theretofore conveyed to the United States by his predecessors
46 in title; these complainants must be charged with notice that in 1913 this defendant received his conveyance to these lands, the entire title, not a half interest, and yet no steps taken legally to assert their claim.

It does not seem to me that because the defendant may be charged with notice of the claims of complainant that would excuse the delay from 1896 or 1898 to 1920 by the complainants in asserting the claim made in the bill.

Venancio Sanchez at the time he made his protest to the land Department against the issuance of the patent at the instance of Davis that Davis' claim was antagonistic to his.

Any laches chargeable to their predecessor in title to the complainants is chargeable to them and their right to maintain the suit must be tested by the right of their predecessor, had he remained alive and retained the title; and had he remained alive and waited until 1920 to assert his rights against this defendant, certainly a Court of Equity would not entertain the suit.

I am of opinion that the defendant occupies the position of a bona fide purchaser for value and that the complainants are barred by their laches from maintaining this suit.

A Decree will be entered granting the motion to dismiss the bill.

RHYDON M. CALL,
Judge.

At Jacksonville, Florida, March 28th, 1923.

Filed March 28th, 1923.

47 DECREE OF DISMISSAL.

In the District Court of the United States for the Southern District of Florida. In Chancery.

E. C. F. Sanchez, et al, Complainants,

vs.

James Deering, Defendant.

Now on this day came on for consideration the bill of complaint heretofore filed in this cause and the defendant's motion to dismiss the said bill.

The said motion to dismiss having been argued by Hudson, Wolfe & Cason, as solicitors for the defendant, and W. W. Dewhurst, Solicitor for the Complainants, and briefs having been submitted by both parties and the Court having considered the said bill and motion and arguments of counsel;

It is considered ordered and decreed that the bill of complaint be, and the same is hereby, dismissed at complainant's costs.

Done and ordered at Jacksonville, Florida, this 4th day of April, 1923.

RHYDON M. CALL,
Judge.

Filed Apr. 4, 1923.

48 In the District Court of the United States for the Southern District of Florida.

E. C. F. Sanchez, Eugene E. Sanchez, Mabel Sanchez, Mercedes A. Sanchez, William J. Sanchez, Appellants,

vs. In Chancery.

James Dearing, Appellee.

Now comes E. C. F. Sanchez, Eugene E. Sanchez, and William J. Sanchez, Complainants, and say that in the record and proceedings in the above entitled cause had therein there is manifest error; that the Court erred in:

1. Sustaining the motion of the Defendant to dismiss the bill;

2. Dismissing the bill of complaint.

Wherefore Complainants pray that said decree be reversed.

W. W. DEWHURST,
Solicitor for Complainants and Appellants.

Filed Sept. 28, 1923.

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53 In the District Court of the United States in and for the Southern District of Florida.

United States of America,
Southern District of Florida.

I, EDWIN R. WILLIAMS, Clerk of the District Court of the United States of America, in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, hereby certify that the foregoing typewritten pages numbered from 1 to 52 inclusive, comprise a true and correct transcript of record in the case of E. C. F. Sanchez, et als Appellants, vs. James Deering, Appellee, prepared according to directions filed in this office, as the same appears from the records and files of this Court.

In witness whereof, I hereunto set my hand and affix the official seal of this Court at Jacksonville, Florida, this 23rd day of November, A. D. 1923.

(Seal) EDWIN R. WILLIAMS.

Citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

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IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 4252

E. C. F. SANCHEZ et als., Appellants,

versus

JAMES DEERING, Appellee

Appeal from the District Court of the United States for the Southern District of Florida

William W. Dewhurt for Appellants.
F. M. Hudson (F. W. Cason on the brief), for Appellee.

Before Walker and Bryan, Circuit Judges

OPINION—Filed March 18, 1924

BRYAN, Circuit Judge:

In 1913 the appellee acquired the legal title to 175 acres of land on Key Biscayne, in Dade County, Florida. In 1920 the appellants filed their bill to impress this title with a trust in their favor to the extent of an undivided half interest. The District Court, upon appellee's motion, dismissed the bill on the ground that the relief sought was barred by laches.

The opinion of the District Judge is reported in 288 Fed. 412. It is preceded by a statement of the contents of the bill, which is correct as far as it goes, except that where the names "Waters S. Smith" and "Mary Ann Smith" occur it was obviously the intention to refer to Waters Smith Davis and Mary Ann Davis. The bill also contains averments, which appear to us to be material, to the effect that about 1840 the husband of Mary Ann Davis sought to interest Venancio Sanchez in developing Key Biscayne, after which said Sanchez discovered that Mrs. Davis owned only an undivided half interest; that he then learned, in some way not disclosed, that the owners of the other half interest lived in Cuba, and soon thereafter went to Havana, met Antonia Porsila and purchased her half interest; that Sanchez was acquainted with Raphael Andreu, who lived in St. Augustine; and that Mary Ann Davis died about the year 1885.

July 23, 1824, Mary Ann Davis made application to the commissioners appointed pursuant to the Acts of Congress of May 8, 1822, 3 Stat. 709, and March 3, 1823, 3 Stat. 754, for confirmation to her of the grant originally made to Pedro Fornells. In support of this application she represented that she had purchased from Raphael Andreu, the son and heir of Fornells' widow and hier. December 21, 1824, the commissioners confirmed the grant to her. 4 American State Papers, (Duff Green Edition) 161, 218, 275; and,

January 1, 1825, reported their action to the Secretary of the Treasury, who, February 21, 1825, referred the report to Congress. Id. 83, 157, 169. The Act of Congress of February 8, 1827, confirmed all claims "contained in the reports, abstracts, and opinions, of said commissioners, which have been transmitted to the Secretary of the Treasury, according to law, and referred by him to Congress on the 21st. of February, 1825." In view of these proceedings and this confirmatory Act of Congress, we are of opinion that the legal title vested in Mary Ann Davis in 1847, when the official survey was made, and did not remain in the United States until issuance of the patent in 1898. In Langdeau v. Hanes, 21 Wall. 521, it is said:

"A legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectually as a grant or quit claim from the government. 'A confirmation,' says Sheppard in his Touchstone of Common Assurances,' is the conveyance of an estate, or right, that one hath in or unto lands or tenements, to another that hath the possession thereof, or some estate therein, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased and enlarged.' If the claim be to land with defined boundaries, or capable of identification, the legislative confirmation perfects the title to the particular tract, and a subsequent patent is only documentary evidence of that title. If the claim be to quantity, and not to a specific tract capable of identification, a segregation by survey will be required, and the confirmation will then immediately attach the title to the land segregated."

It is true that this case does not relate to land ceded by Spain to the United States under the Treaty of 1819; but the same rule is applied to a Spanish grant in Wilson Cypress Company v. del Pozo y Marcos, 236 U. S. 635. The failure to assert whatever interest the appellants had continued for 50 years prior to the issuance of the patent, and in considering the question of laches, the period of time involved extends over 73 years, or from 1847, the date of the survey, to 1920, when the bill was filed.

Before Venancio Sanchez, under whom the appellants claim, obtained his deed in 1843 from Antonia Porsila, who it is asserted inherited from her father, Pedro Fornells, a half interest in the land in dispute, he knew that Mary Ann Davis was claiming to be the owner in her own right of the entire interest in the property. The bill does not aver that Mary Ann Davis ever acknowledged or recognized that she held the title to a half interest in trust. The utmost that is asserted in this connection is that her husband did not dispute the claim of Venancio Sanchez; but evidence to bind the estate of a deceased person is inadmissible. The averment that Waters S. Davis offered to sell to Venancio Sanchez, or to buy from him, when taken in connection with the averment that immediately after his proposition was declined he applied for a patent, and resisted the claim of an adverse interest, is not sufficient to support the inference that he acknowledged or recognized that he held any part of the title as trutee. Venancio Sanchez knew

Antonia Porsila, Mary Ann Davis and Raphael Andreu, all of whom were living when he purchased his adverse claim, which if valid should have been established while the witnesses who knew about it were living. Mary Ann Davis lived until 1885. and it was not until long after her death that her title was contested. The long delay and the death of material witnesses appear on the face of the bill, and, if they constitute laches, the bill may be dismissed without requiring an answer. The appellants realize this, and set up as excuses the constructive notice afforded by the recorded deed from Venancio Sanchez to them, and their inability to trace the relationship between Antonia Porsila and Raphael Andreu until discovery in 1919 of an index to the Spanish Archives. The recorded deed to the appellants would only have charged the appellee with notice of a claim which apparently had been abandoned for a period of 50 years; and the index would only have furnished information already possessed by Venancio Sanchez at the time he purchased the Claim now sought to be enforced. The laches is made up, therefore, of a delay of 73 years and the loss of evidence by the death of witnesses which cannot in the nature of things be now available to the appellee. We are of opinion that it is too late now to enter into the merits of a claim of title which could have been asserted and enforced if good, and rejected if bad, while the witnesses who knew about it were living and could have testified with reference to it.

The decree is affirmed.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT

Extract from the Minutes of March 18th, 1924

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause, be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, E. C. F. Sanchez, and others, and the sureties on appeal bond herein, William J. Sanchez and John T. Dismukes, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed June 13th,1924

E. C. F. Sanchez, Eugene E. Sanchez, Mabel Sanchez, Mercedes A. Sanchez and William J. Sanchez, Appellants, in the above entitled cause, respectfully show that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit: that judgment therein has been rendered on to wit the 18th day of March, 1924, affirming the decree of the District Court of the United States for the Southern District of Florida and that the matter in controversy in said suit exceeds the sum of $3,000 besides costs: that this cause is one in which the United States Circuit Court of Appeals for the Fifth Circuit has not final jurisdiction: That it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore the said Appellants pray that an appeal be allowed them in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit to send the record of proceedings in said cause with all things concerning the same to the Supreme Court of the United States in order that the errors complained of in the assignment of errors herewith filed by said Appellants may be reviewed and if error be found correct it according to laws and customs of the United States.

(Signed) William W. Dewhurst, Solicitor and Counsel for Appellants.

Appeal allowed and bond fixed in the sum of Five Hundred Dollars, conditioned as the law directs this the 10th day of June, A. D. 1924.

(Signed) N. P. Bryan, Judge of the Circuit Court of Appeals, Fifth Circuit.

IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 13th, 1924

The Appellants in the above entitled cause in connection with their petition for appeal herein present and file therewith their Assignment of Errors as to the matters and things in which they say the decree of the said United States Circuit Court of Appeals for the Fifth Circuit, dated to wit March 18, 1924, is erroneous, to wit:

(1) The Court failed to understand the nature of the case made by the bill.

(2) The Court in its opinion has stated and decided a case other than the case made by the bill and different therefrom.

(3) The bill of complaint presented for decision the effect of a patent by the United States of an inchoate concession for 155 acres of undefined land made by Spain before the transfer of the Floridas to the United States, unsurveyed under Spain, the legal title to which passed to the United States under the Treaty of 1819, which concession was confirmed under the acts of Congress approved May 8, 1822, and February 28, 1827, and the law applicable to such a concession so confirmed. The Court in its opinion and decree has applied to the case the laws applicable to the confirmation of grants of land the legal title to which was never in the United States.

(4) The bill made a case where the documentary evidence of title showed an incomplete title to land, without boundary lines, unsegregated from the Royal Domain, but the Court applied the law applicable to a claim to land with definite boundaries to which a Royal Title had issued, and which was private property before the cession of the Floridas by the King of Spain to the United States.

(5) To a claim to lands confirmed by an act of Congress which expressly provided that confirmed claims should be surveyed, plats and certificates of survey thereof made, one to be filed in the office of the register for the district where the land lay and the other given the claimant: Making it the duty of the register to issue patent certificates to claimants entitled thereto, which patent certificates are to be presented to the Commissioner of the General Land Office "and if it shall appear to the satisfaction of the Commissioner of the General Land Office that the certificates have been fairly obtained and correspond with the transcript submitted to the Secretary of the Treasury and the plat returned by the surveyor, patents shall be granted" etc. The Court has misapplied the law applicable to the issuance of a patent upon a claim confirmed under a law which in terms prescribed that the person whose claim is confirmed whenever his claim shall have been located and surveyed shall be entitled to receive a certificate stating that the claimant is entitled to receive a patent by virtue of an act of Congress, which certificate shall entitle the party to a patent.

(6) The Court erred in holding that upon the allegations made in the bill as of fact in clear and definite terms as admitted by the motion to dismiss, without suggestion that the facts were not well pleaded, the defense of laches could be presented by motion to dismiss.

(7) The Court erred in finding that the bill on its face showed such long delay and death of material witnesses as constituted laches.

(8) The Court erred in affirming the decree of the District Court appealed from.

(9) The Court erred in not reversing the decree of the District Court appealed from.

(Signed) William W. Dewhurst, Solicitor and Counsel for Appellants.

IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages unmbered from 44 to 55 next preceding this certificate, contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 4252, wherein E. C. F. Sanchez, et als., are appellants, and James Deering is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 43 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscride my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 1st. day of July, A. D. 1924.

Frank H. Mortimer, Clerk of the United States Circuit Court or Appeals, Fifth Circuit. (Seal United Circuit Court of Appeals, Fifth Circuit.)

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM 1923

E. C. F. SANCHEZ et al., Appellants,

vs.

JAMES DEERING, Appellee

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION BY APPELLANTS OF PARTS OF RECORD TO BE PRINTED—Filed July 14, 1924

The Appellants intend to rely on points which are set forth in the following portions of the record:

Bill of Complaint;

Motion of Defendant to dismiss the bill of Complaint;

The opinion of the District Court and the decree of the District Court;

Assignment of Errors to the decree of dismissal of the District Court;

Opinion of the Circuit Court of Appeals;

The decree affirming the decree of the District Court;

The Assignment of Errors to the Decree of the Circuit Court of Appeals,

and counsel for Appellants deem only so much of the transcript of the record in said cause on file in the Supreme Court as above set forth is necessary for the consideration of said cause and request that the Clerk shall print those parts only.

William W. Dewhurst, Solicitor for Appellants.

Service of the above suggestions accepted this 5th day of July, 1924.

F. M. Hudson, Solicitors for Appellee.

[File endorsement omitted.]

Endorsed on cover: File No. 30,501. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 536. E. C. F. Sanchez, Eugene E. Sanchez, Mabel Sanshez, et al., appellants, vs. James Deering. Filed July 14th, 1924. File No. 30,501.